

# DIRECTIONS

FOR PROSECUTING

## THIEVES

Without the

Help of those *False Guides*,

THE

*Newgate* SOLLICITORS,

With a great deal of Ease, and little  
Expence :

Wherein is laid down

The Manner of INDICTING a FELON at  
*Guild-Hall, Hicks's-Hall, or the Old Bailey.*

To which is added

A LESSON, very necessary to be perus'd by  
those Gentlemen who serve as *Jurors* in any  
of His Majesty's Courts of Judicature.

---

*Dedicated to Sir William Thompson, Knt.*  
RECORDER of the City of London.

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To the HONOURABLE

Sir *William Thompson*, Knt.

R E C O R D E R

OF THE

City of L O N D O N.

S I R,

**T**HE great Employment you enjoy in the Civil Government of this City and County, would lead me, with a very good Grace, to apply to your self for the Patronage of a Work of this Nature ; but the Integrity, Reputation, and Abilities, with which you fill that Employment, your Love of Mankind, and your Zeal for the due Execution of the Laws, and the Preservation of our Civil Rights, distinguish you as the only Gentleman I ought to address on this Occasion. If what I have done in the following Pages for the Instruction of great Numbers of my Fellow Citizens in the Discharge of that important Duty of Civil Life, the Prosecution of Felonies, has the good Fortune to meet with your Approbation, I may be  
sure



## DEDICATION.

*sure it will meet with the Approbation of every one else. I cannot pretend, Sir, it is correct (my Profession is not directly the Law:) But I will beg Leave to say it is an honest Design, to detect and put a Stop to the oppressive and dishonest Practices of the Tribe of Solicitors, in Prosecutions for Felony about this City; and as such, I flatter myself you will easily look over my Imperfections. I was inclin'd to think, that Instructions of this Nature were wanting among the ordinary Prosecutors at the Old Bailey, and that they would generally tend to facilitate the Execution of Justice, which, if I am not mistaken, is hinder'd, in some Degree, by the Practices of Newgate Solicitors, and such like People; and as I have been conversant enough among this sharpening Troop to be acquainted with the ordinary Tricks and Abuses they live by, I thought it a Justice to Mankind, and a Justice to the Laws, to lay them as open as I was able; and I have accordingly done it.*

*But whatever be the Execution of my Design, it will do me Honour with the wise and judicious part of Mankind, that I have chosen to beg your Patronage. Your great Reputation will defend my Judgment in the one, though my little Experience should not acquit me in the other; and I am, with the highest Respect,*

*Your most Obedient,  
Humble Servant,  
THE AUTHOR.*





# INSTRUCTIONS

For Carrying on

## PROSECUTIONS

FOR

*Felony, Burglary, &c. at the  
Old Bailey.*



It is frequently matter of Complaint, that the Prosecution of a Thief costs more Money than the Value of the Goods stolen amounts to; which makes People chuse rather to sit down with the first Loss, than be at the extravagant Expence which attends a Prosecution. By this means a Villain often escapes Justice, and is thereby encourag'd to persevere in his wicked Practices, till, from  
B
Trifles,

Trifles, and little pilfering Tricks, the Wretch audaciously takes to the Highway, or robbing in the Streets : Which Violences might have been prevented, and the Villain's Life saved, if his Villany had been nipp'd in the Bud, and he sent abroad for his petty Larcenies, according to Act of Parliament. And let a thousand plodding Heads be laid together in drawing up Schemes to prevent Street Robberies, in my humble Opinion, the most effectual Method will be, to prosecute the Law vigorously against all Offences whatsoever. And that Persons injured may be encouraged to do themselves and the Publick this Justice, I have diligently enquired into the Causes of these Impositions, so justly complain'd of; and though it concerns the Livelihood of several very active Gentlemen, if the *Newgate* Solicitors deserve that Application, yet a Regard ought to be had to the publick Good; and as these Sparks support themselves only by their own Impudence, and the Ignorance of other People, they ought in Justice to be detected.

There is no honest Man can desire to have a Thief to prosecute; and such seldom trouble themselves with thinking what Methods are to be taken on such an Occasion, before they have the Misfortune to suffer by a Robber; and then a Solicitor makes Application to the Party robbed, as readily and expeditiously, as the Company of *Upholders* attend a young Heir at the Death of his Father, or a Widow at the Demise of her Husband. When it gets into the publick Papers that such a Person was robbed of, &c. he is not many  
Hours



Hours without some of these officious Persons to advise him ; and what with the Assurance of the one, and Ignorance of the other, the Matter is undertaken on the Solicitor's Terms. But to make it secure, the Solicitor pulls out a Pocket-Book, takes the Name of the Prosecutor, the Parish of which he is an Inhabitant, and the Value of the Goods stolen ; and that he may be guilty of no Mistake, he must visit the Prisoner for his true Name, and how to spell it, with the different Names he goes by, though all this amounts to no more than the Colour of his Coat, or whether he had on a Pair of round or square-toed Shooes when he did the Robbery ; it is sufficient that he is indicted in the same Name by which he is committed ; and though it is absolutely necessary Notice should be taken of the Goods stolen, their Value, and the Time when stolen, and the Parish in which the Robbery was done, yet this, and much more, may be done, without the Help of one of these Harpies, as I shall make plain to the meanest Capacity.

When the Solicitors have thus began the Work, their next Step is to make a great Stir in summoning all those together, who are to be Witnesses at the Trial of the Prisoner, and to direct who shall speak first, and how they shall deliver themselves to the Judge and Jury : And hear they make a great Noise of their true Notions of Law, and vast Success in dictating proper Measures of proceeding. The Felon, the Penalty of whose Crime amounts to no more than Transportation by Law, is now tried, condemned, and hanged, before



he takes his Trial according to Law, and the Money allowed for the taking and convicting a Felon, being as good as in the Prosecutor's Pocket; loose and vicious People, who are without a sense of Religion, and consequently the Obligation of an Oath, are apt to strain the Circumstances in view of the Reward; and were not our Reverend Judges knowing and experienced in finding out the Truth, as well as just in the Administration of the Laws, by the Insinuations of the Solicitor, and the Covetousness of the Prosecutor, Truth would be perverted, and very frequently People hanged for a Burglary, when the Fact is only a single Felony, and for Street Robbery, when it was only a Quarrel between the Prosecutor and the Prisoner. But our Legislators have been so careful in making our Laws, and our Judges are so just and circumspect in the Execution of them, that it's justly presum'd every Man's Case appears in a true Light to the Jury, before they are left to the giving their Opinion, and bringing in the Verdict.

But this indeed does not concern the Solicitor, whether the Prisoner be guilty, or not guilty, hang'd, or acquitted; for before the Verdict is well given, he delivers his Bill, and demands Payment; and it signifies nothing to say the Bill is more unreasonable than a Taylor's, he insists upon it to be only customary, and a standing Custom is as good Law as *Magna Charta*, when at the same time, if either Law or Reason were duly executed, the Prosecutor would save five Parts in six of the exorbitant Charge, and the Solicitor be oblig'd

obliged to follow some more honest and commendable Employment.

But some silly People are so ignorant as to believe they cannot be brought into Court, without being introduced by a Solicitor, nor be heard if they do not speak his Language more strictly than their own Sentiments ; but in this they are strangely deceiv'd, for the Solicitor cannot bring them in before they are call'd, when no Officer dares keep them out, and nothing pleases the Judges more, than to hear Truth told with the utmost Simplicity and Plainness, the Proceedings and Villany of sharpening Solicitors being so odious in all our Courts of Justice, that they are frequently turn'd out of Court, and severely reprimanded, if they escape with Impunity. But to proceed in my Advice to the Prosecutor, in order to avoid them.

When first you apprehend and take a Thief, who has broke your House, or robbed your Person, it is a very easy Matter to tell when, where, and how the Fact was committed ; and if upon Examination it appears to be Fact, and the Thief committed to Prison, you have no more to do with him till the Sessions ensuing begins at *Guild-Hall* and *Hicks's-Hall*, when, if the Fact was committed in the Liberties of the City, you are to apply to the former Place ; if in the Suburbs, or in any other part of the County of *Middlesex*, to the latter, when, to prevent as much Trouble as you can to the Person who attends to draw up the Bills to be presented to the Grand Jury, you must write down the Name of the Prisoner, the Time the Fact was committed,

as



as near as you can remember, and the Parish in which you was robbed in Person ; or if the Goods were stole out of your House, set down the Name of the Parish in which you live, and the Value of the Goods lost ; for Instance, *If I. G. break open your House in the Night-time, and steal thence a Silver Tankard, and a Dozen of Pewter Plates, on the, &c.* it is very easy to write it down, with a reasonable Value, and then deliver it to the Person appointed to draw up the Bills, to whom you are to give two Shillings ; to whom you are likewise to give the Names of those who saw the Fact done, who bought the Goods of the Prisoner, or can give any reasonable Account, or shew any Circumstance, that the Prisoner did the Fact ; and when the Bill is drawn up, you swear to it, for which you are to pay Four Pence ; and then go with your most material Witnesses to the Grand Jury, who likewise sit in *Guild-Hall* and *Hicks's-Hall* ; and then you relate upon Oath the Circumstances, and what Reason you have to charge the Prisoner. If your Evidence amounts to good and clear Proof, the Bill is found, and will be transmitted to the *Old Bailey*, without any further Trouble or Charge to you, and the first Day of the Sessions, at the *Old Bailey*, you are to attend with your Witnesses, till you and they are call'd into Court, when you and they are sworn to speak the Truth, the whole Truth, and nothing but the Truth ; and what is easier than to speak Truth, and what you know and saw, but not what others said, for that is no Evidence ; your only Business is to tell the Court, with due Reverence and Submission,



mission, the best of your Knowledge, as to the Fact being committed, and the Reasons you have to charge the Prisoner ; after which you are to give place to the next material Witness, who is to do the same, having all the while a deep Sense of the Weight of an Oath, and the Curses you entail upon your self by a false Accusation.

When the Trial is ended you are to withdraw ; and if you have any Goods in the Hands of the Constable who apprehended the Prisoner (to whom the Goods found upon a Prisoner is usually delivered till the Trial) you must wait till the Jury have brought in their Verdict ; and if the Prisoner is found guilty of the Indictment, or is only found guilty of the Indictment in part (sometimes a Prisoner being indicted for Felony and Burglary, and only found guilty of the Felony) yet, upon Application to the Court, the Goods will be deliver'd to you by the Constable or Pawnbroker who has them in Custody, which they dare not deny surrendring in open Court without any Charge at all to the Prosecutor.

Be sure, when you give Instructions to the Person who draws up the Indictment, to observe whether your House was broke open in the Night-time, and the Hour, as near as you have reason to believe, it was broke, or in the Day-time ; or if you are assaulted, and Money or Goods taken from you, observe to mention the Goods taken from your Person ; if your Pocket is pick'd, and you knew nothing of it till the Fact was committed, it is to be express'd privately, and from your Person : So likewise, if you are assaulted on the Highway,

Highway, and the Prisoner had a Pistol, Sword, or any other offensive Weapon in his Hand, and by Threatnings and Menaces put you in bodily Fear, it is to be so express'd: But if you was not put in bodily Fear, only say, *assaulted on the Highway, &c. and took from you, &c.* But if you are only assaulted on the Highway, and the Prisoner did not take any Money or Goods from you, he must be indicted for a Misdemeanor.

But that the Reader may not mistake for want of plain Examples, observe;

If you are robb'd in Person on the Highway, write down,

**O**N the——Day of——I. G. assaulted A. B. on the Highway, in an open Place near —— in the Parish of——putting him in Fear, and taking from him——the Goods and Money of the said A. B.

Or if the Money or Goods were not the Person's Property who was robb'd, say, *The Money and Goods of ——* naming the Person to whom they belong.

If your House is broke open in the Night-time, and Goods taken, write,

**I**. G. broke open the House of A. B. on the——Day of——at the Hour of——in the Night-time of the same Day, and took thence——Value——the Goods of A. B.

If a Thief attempts to pick your Pocket of an Handkerchief, and you apprehend him in the Fact before he has taken it out of your Pocket, he is not to be indicted for a Felony, but



but for a Misdemeanor, and in such a Case, write,

**I** G. assaulted A. B. on the Highway, in the Parish of— with Intent to steal and bear away a Silk Handkerchief from— Value— on the— Day of— last, the Property of—

So if a Thief breaks into your House, and he be taken before he has bundled up any Goods to carry away, or has any Goods upon him, write,

**I** G. broke the House of A. B. in the Day-time (or Night) on the— Day of— last, in the Parish of— with Intent to take and bear away the Goods of—

Note, If the Fact is committed in the City, apply to the Clerk of the Peace for the City at *Guild-Hall*, on the first Day of the Sessions held there, or to the Person who attends in his Office (for the County) in *Hicks's-Hall*, on the first or second Day of the Sessions.

But the Gentleman employ'd to draw up Indictments will readily assist you, upon delivering a Note of the Materials, and desiring Advice; Mistakes of this Nature seldom happening for want of a Solicitor; but on the contrary, the Gentleman who draws up the Indictment believing a Solicitor able to express it in proper Terms, and that he takes Care so to do, seldom examines strictly how the Nature of the Case is, when as it frequently happens the Solicitor, having a great deal of such Business upon his Hands, and

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perpe-



perpetually tippling at the Expence of silly People, blunders in the Relation, and has a Bill found without the material Circumstance, which often proves a great Disappointment to the Prosecutor; and what is still worse, the Solicitor may be in Fee with your Prisoner to intangle you at the same time that he takes your Money, promising to exert the utmost of his Talents to cast the Prisoner; This, 'tis to be fear'd, is too often practis'd; And what can you expect less from one whose Livelihood depends upon Tricking, Sharping, and the Ruin of other People: For Instance, read the following Bill, drawn by a *Newgate* Solicitor;

*I. H. Debtor to B. P. for Advice  
and Management.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
<b>F</b> OR the first time of Waiting } and Advice ——— ———	00	03	06
For examining and cautioning fix } Witnesses ——— ——— ———	00	10	00
For a Coach home ——— ———	00	02	00
For sending the <i>Subpœna's</i> , and the } Charge of them ——— ———	00	15	04
For attending on the Prisoner to } bring him to Confession ———	00	05	00
For waiting at <i>Hicks's-Hall</i> ———	00	10	00
For attending at the <i>Old Bailey</i> ———	00	06	08
Money expended at divers Times } on this Account ——— ———	00	16	03

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03 08 09

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By

By the above Bill may be seen the Expences the Prosecutor is run to, by imploying a Solicitor; when, if you observe the Instructions herein given, and do your Business without a Solicitor, the whole Prosecution of a Thief will cost you no more than two Shillings and four Pence.

I'll not say the Solicitors are all so vile and unreasonable in their Demands, as the afore-mention'd Bill would make them; nor indeed are they all so reasonable, when they have easy money'd People to deal with; for I have known a Gentlewoman run to seven Pounds Charge in prosecuting a Woman for stealing a Brass Candlestick: But in the Case above, the Prosecutor was scarce in a Capacity to pay the odd eight Shillings and nine Pence, yet the Solicitor was so cruel to make him pay the utmost Farthing, though he borrowed it.

When People find themselves thus abus'd, they immediately fly in the Face of the Law, and lay all the Guilt of these subtle Knaves on our Legislators. But this way of censuring is both unreasonable and unjust; for our Laws are made, on these Occasions, so easy to the Subject, that if the Prosecutor's Care and Caution were not wanting, there would be no occasion for Complaint. We see, in all Cases and Degrees of Life, the unwary are made Properties to the crafty and designing; and when they are so betray'd, the Law is not to bear the Blame, but their own Credulity and Mismanagement. People of Spirit and Resolution undertake their Prosecutions themselves, and find, by the Conclusion, that it turns to very good Account,

Indeed, when a Matter of great Consequence is to be try'd, Advice is necessary; and in such Cases there is Council learned in the Law to apply to, who, though they are at no little Expence and Trouble in attending several Times, rather than disappoint their Client, and neglect to do him all the Justice the Merits of the Cause will admit of, yet the Charge will in the end be found less than the employing a *Newgate* Solicitor, who in effect does nothing at all, but what might have been as well done, and very often much better, without him.

I have known some Fellows, who have had nothing else to support them for some Years, but what they perfectly extorted from People for Advice (and what may properly be call'd *Mismanagement*) at *Guild-Hall*, *Hicks's-Hall*, and the *Old Bailey*, in the time of the Sessions.

What Pity it is a free People should not be sensible of their Freedom, but through Ignorance or Temerity forfeit all the Privileges the Justice of our Laws have given them. I have known some People tremble and look more affrighted at the time of giving Evidence against a Prisoner, than the guilty Culprit; when did they but consider the Right they have to prosecute the Invaders of their Property, and the Judges and Jury before whom they stand are set there on purpose to vindicate them in that Right, it would animate their Courage, and be a Lesson to direct their Conduct. Every Prosecutor, who appears in a Court of Justice, is not expected to be a Lawyer, nor is their Wisdom or Strength of  
Judg.



Judgment the Case, but their Truth and Honesty, which, when they make appear, they are sure of Justice.

No Man looks on a Judge with more Reverence and Respect than my self; yet I cannot see why those, who appear to do themselves Justice should come with Fear and Trembling, intimidated as if they were to be committed to a Jail; which Surprise frequently runs them into such Errors and Mistakes, that if the Judges were not to draw the Circumstances of the Fact from them by a mild and gentle Method, and patiently bear with a tedious and round-about Tale, what with Confusion, Circumlocution, and Tautology, the Prosecutor would fill his Evidence so full of Intricacies and Incoherencies, as would give the Advantage to the Prisoner, if he was ever so guilty; but the Weakness of the Prosecutor is carefully consider'd, and the Truth discern'd, tho' surrounded with wild and confus'd Disorders: But it would be more to the Ease and Satisfaction of the Court, as well as the Credit and Reputation of the Prosecutors, if they would be a little more concise and clear than they usually are; the Truths they relate would then shine, and the very Prisoner, hearing the Evidence given against him both plain and positive, would have no Opportunity to trouble the Court with a long, trifling Defence, every thing being prov'd by clear and powerful Evidence.

These Solicitors likewise very often lead their Clients into other Errors, which are of worse Consequence than paying an exorbitant

tant Fee, or even the Mistakes they are led into by the Solicitor's Ignorance or Negligence, as thus ; A Solicitor, not being always acquainted with the Laws, or not caring whether they are duly executed, will often, for a Fee from the Prisoner, advise the Prosecutor to compound the Felony before Sessions, or not to appear at the Sessions of *Oyer and Terminer* after the Bill is found by the Grand Jury, for which he is liable to a Prosecution, and may be arraign'd at the Bar, and the least he can expect is to have his Recognizances estreated, the Consequence of which is a severe, tho' just, Punishment for such unwarrantable Proceedings ; and tho' it were so, not that these Actions are a Subversion of Justice, and in opposition to all Law, yet can any honest Man apprehend a Thief, and, after delivering him into the Hands of a Civil Magistrate, that Law may take place, by subtil, base Means make a Gain of Villainy, or by a Pusillanimity, call'd *good Nature*, suffer such a one to escape Punishment ? No ; in the Eye of the Law such a one is culpable, and in the Eye of Reason he cannot be innocent ; our Judges and other Magistrates are set over us *to be a Terror to evil Doers, and a Praise to them that do well* ; and none, who have a Regard to the Laws of God or Man, will be a Confederate (as it were) with a Thief, by taking a Bribe, or usurp an Authority he has no Right to.

I shall next observe some Things, which will tend to the Instruction and Satisfaction of the Publick, and be worth the Perusal of those Gentlemen who shall occasionally serve  
on.



on the Jury: But in this I shall not presume to depend upon my own Judgment, but collect some very material Observations out of Serjeant *Hawkins's* Pleas of the Crown.

“ Any Attempt by either Party, or a Stranger, to corrupt or influence a Jury, or to incline them to favour one side by Gifts or Promises, Threats or Persuasions, or by instructing them in the Cause (or any other way, except by opening and enforcing the Evidence by Council at the Trial) come under the Notion of *Embracery*, whether the Jurors give any Verdict or not, and whether the Verdict be true or false; and it is an Offence of this kind for a Stranger barely to labour a Juror to appear and act according to his Conscience, or for any Person to labour a Juror not to appear; but it is no Offence for one who can justify any other Act of Maintenance, to labour a Juror to appear, and give a Verdict according to his Conscience.

“ It is not safe to give Money to a Juror after the Verdict, unless it be openly and fairly given to all alike, in Consideration of the Expences of their Journey, and Trouble of their Attendance, &c.

“ The bare giving of Money to another, to be distributed among Jurors, favours of *Embracery*, whether any of it be distributed or not. And it is an Offence of the like kind, for a Person, by indirect Means, to procure himself, or another, to be sworn of a *Tales*, in order to serve one side; and it is as criminal in a Juror, as in any other Person, to endeavour to prevail on his Companions



“ panions to give a Verdict on one side by  
 “ any other Arguments besides the Evidence  
 “ produc’d, and the general Obligations of  
 “ Conscience, &c.

“ *Embracery* is punishable at Common Law  
 “ by Indictment or Action; and if it were  
 “ not known before the Trial, it will be a  
 “ good Cause to set aside a Verdict.

*And it is Enacted by 5 Ed. 3. c. 10.* “ That  
 “ if any Juror in Assizes, Juries or Inquests,  
 “ take of the one Party or of the other, and  
 “ be thereof duly attainted, he shall not after  
 “ be put in any Assizes, Juries, or Inquest,  
 “ and nevertheless he shall be imprison’d and  
 “ ransom’d, &c. And the Justices, before  
 “ whom such Assizes, &c. pass, shall have  
 “ Power to enquire, &c. according to this  
 “ Statute.

*And it is further Enacted by 34 Ed. 3. c. 8.*  
 “ That if any of the Parties will sue against  
 “ any Juror for having taken of his Adver-  
 “ sary, or of him, to give a Verdict, he shall  
 “ be heard, and shall have his Plaint by Bill  
 “ presented before the Justices before whom  
 “ they did swear, and the Juror shall answer  
 “ without Delay; and if he plead to the  
 “ Country, the Inquest shall be taken *Main-*  
 “ *tenant*: And if any Man, other than the  
 “ Party, will sue for the King, it shall be  
 “ heard, &c. as before is said. And if the  
 “ Juror be attainted at the Suit of other than  
 “ the Party, and make Fine, the Party that  
 “ sues shall have half the Fine, and the Par-  
 “ ties to the Plea shall recover their Damages  
 “ by the Assessment of the Inquest, and the  
 “ Juror so attainted shall have one Year’s  
 “ Imprison-

“ Imprisonment, not to be pardoned by any  
 “ Fine: And if the Party will sue by Suit  
 “ before other Justices, he shall have the Suit,  
 “ as aforesaid.

*And it is further Enacted by 38 Ed. 3. c. 12.*

“ That if any Jurors in Inquest to be taken  
 “ between the King and Party, or Party and  
 “ Party, do any thing take by them, or other,  
 “ of the Plaintiff or Defendant, to give their  
 “ Verdict (which Words extend to a Pur-  
 “ chase of Lands at a Price known to be un-  
 “ der the true Value) and thereof be attaint-  
 “ ed by Process contain'd in the said Statute  
 “ of 34. E. 3. be it at the Suit of the Party  
 “ that will sue for himself, or for the King,  
 “ or for any other Person, every such Juror  
 “ shall pay ten times as much as he hath  
 “ taken; and he that will sue shall have the  
 “ one Half, and the King the other; and all  
 “ the Embracers, to bring or procure such  
 “ Inquest to take Gain, shall be punish'd in  
 “ the same manner; and if the Juror or Em-  
 “ bracer so attainted have not whereof to  
 “ make *Gree* in the manner aforesaid, he shall  
 “ have one Year's Imprisonment; but no Ju-  
 “ stice shall enquire of Office upon any of the  
 “ Points of this Article.

“ In an Action of this Statute there is no  
 “ need to set forth the whole Record of the  
 “ Action in which the Money was taken,  
 “ but only so much as conveys the Plaintiff  
 “ to his Action: But any Variance in the  
 “ first Record from that in the Declaration in  
 “ the *Decies tantum*, is pleadable in Abate-  
 “ ment; and it seems a good Plea in Bar,  
 “ that there is no Record by which it may  
 D “ appear



“ appear that any Juror was sworn in the  
 “ former Action.

“ It is not enough to shew, that your De-  
 “ fendants took Money to embrace a Jury,  
 “ without shewing also, that they actually so  
 “ dispos’d of it: Neither is it sufficient to  
 “ shew, that the Juror receiv’d Money, with-  
 “ out shewing in certain how much.

“ Money given to a Juror after the Ver-  
 “ dict, is not within the Statute, if there  
 “ was no precedent Contract.

“ It is not material, whether the Jurors  
 “ gave any Verdict or not; or if they gave  
 “ one, whether it were true or false.

“ All the Jurors and Embracers may be  
 “ join’d in one Action, notwithstanding they  
 “ receiv’d several Sums, because all was re-  
 “ ceiv’d in order to give the same Verdict:  
 “ But it seems that each Defendant ought  
 “ to plead severally, that he did not take any  
 “ Money against the Form of the Statute;  
 “ but not Guilty is no Plea.

“ The Plaintiff, in a *Decies tantum*, shall  
 “ be paid the Moiety due to him on the  
 “ Judgment before the King, because the  
 “ King’s Moiety is not due as a Debt, but as  
 “ a Fine.

Other notable Remarks are made by Ser-  
 jeant *Hawkins* on the Law against Bribery:  
 But, as Care is taken in the Choice of Gen-  
 tlemen to serve in this Capacity, I shall not  
 quote further Particulars on this Head, but  
 give some further Hints, with regard to Evi-  
 dence, from the same Author, which, it is  
 hop’d, will be of use to many on the like Oc-  
 casions.

“ No

“ No Evidence is to be given against a Pri-  
 “ soner in cases of Life, but in his Presence.  
 “ If the Judge think fit to over-rule the Pri-  
 “ soner's Objection to any Evidence in such  
 “ Cases; no Bill of Exceptions has, lest it  
 “ should occasion infinite Delays.

“ It seems that the Common Law did not  
 “ require any certain Number of Witnesses  
 “ in any Case whatever. But there were  
 “ great Authorities, that 1 & 5 & 6 *Ed. 6.* re-  
 “ maining so far in Force, after 1 & 2 *P. & M.*  
 “ as to make two Witnesses still necessary in  
 “ all Trials of Treason not concerning the  
 “ the Coin, and that both of them ought to  
 “ be either to the same Overt Act, or one to  
 “ one, and another to another Overt Act of  
 “ the same kind of Treason, or at least one  
 “ to an Overt Act, and another to a mate-  
 “ rial Circumstance, to prove it. However,  
 “ this Matter seems to be settled by 7 *W. 3.*  
 “ which is express, *That no Person shall be*  
 “ *indicted, tried or attainted for High Treason,*  
 “ *except for counterfeiting the Coin or Seal, &c.*  
 “ *but on the Oath of two lawful Witnesses, ei-*  
 “ *ther both of them to the same, or one to one,*  
 “ *and the other to another Overt Act of the same*  
 “ *Treason.*

“ The Confession of the Defendant himself,  
 “ whether taken on an Examination before  
 “ Justices of Peace, in pursuance of 1 & 2 *P.*  
 “ & *M. c. 13.* or of 2 & 3 *P. & M. c. 10.* upon  
 “ a Bailment or Commitment for Felony, or  
 “ taken by the Common Law for an Exami-  
 “ nation before a Magistrate for Treason or  
 “ other Crimes, or spoken in private Dis-  
 “ course, has always been allow'd to be given



“ in Evidence against the Party, but not a-  
 “ gainst others ; and it was holden, that two  
 “ Witnesses, of a Confession of High Treason,  
 “ or on Examination, were sufficient to con-  
 “ vict the Party, within the Intent of 1 & 5  
 “ & 6 *Ed. 6.* which requires two Witnesses,  
 “ unless the Party willingly, without Vio-  
 “ lence, confess in open Court, &c.

“ Wherever a Man's Confession is made  
 “ use of against him, it must be taken alto-  
 “ gether, and not by Parcels.

“ It is a good Exception against a Witness,  
 “ that he stands convicted of Treason, Felony,  
 “ Piracy, Præmunire, or Perjury, or of  
 “ Forgery, on 5 *Eliz.* or that he stands at-  
 “ tainted in Conspiracy at the Suit of the  
 “ King, or in an Attaint, or that he hath  
 “ been adjudged by a Court which had a Ju-  
 “ risdiction to stand in the Pillory, or to be  
 “ Whipp'd or Branded, &c. But the Re-  
 “ cord of Conviction, &c. must be produc'd ;  
 “ neither shall the Witness be asked any  
 “ Question, the answering of which may ob-  
 “ lige him to accuse himself of a Crime ;  
 “ neither shall his Credit be impeach'd by  
 “ Proof of particular Crimes, whereof he  
 “ never was convicted, but only by general  
 “ Accounts of his Character and Reputation ;  
 “ neither is it an Exception against him, that  
 “ he stands outlaw'd in a personal Action.

“ If a Person, convicted of Felony, have  
 “ his Clergy, and be burnt in the Hand, or  
 “ if one, convicted or attainted of Treason or  
 “ Felony, be pardon'd, he is restor'd to his  
 “ Credit ; and it is laid down as a general  
 “ Rule, that wherever the Disability of be-  
 ing

“ ing a Witness is only a Consequence of the  
 “ Judgment, and not an exprefs Part of it,  
 “ as it is in Perjury, on the Statute it is clear’d  
 “ by a Pardon.

“ A Conviction of Perjury doth not disable  
 “ a Man from making an Affidavit in relation  
 “ to the Irregularity of a Judgment, &c.

“ It is an uncontested Rule, that it is a  
 “ good Exception against a Witness, that he  
 “ is to be a Gainer or Loser by the Event of  
 “ the Cause, whether such Gain or Loss be  
 “ immediate or consequential, and therefore  
 “ it is agreed, that he who borrows on an  
 “ usurious Contract, cannot be a Witness on  
 “ an Information for the Usury, unless he  
 “ hath paid the Money, because, if he was  
 “ to be a Witness, he would in effect swear  
 “ for himself, by proving a Matter which  
 “ would avoid his own Contract. And on  
 “ the like Reason it hath been rul’d, that he  
 “ who has been impos’d upon to set his Hand  
 “ to a Note for more Money than he intend-  
 “ ed, is no Witness on an Information for  
 “ the Cheat, because a Conviction may be a  
 “ Means to avoid the Note, by being made  
 “ use of as a Motive to influence the Jury in  
 “ a Suit on the Note, which cannot be well  
 “ prevented, though in Strictness it be no  
 “ Evidence. And upon the like Reason it  
 “ hath been adjudg’d, that he, whose Pro-  
 “ perty hath been prejudiced by a Forgery  
 “ or Perjury, &c. cannot be an Evidence to  
 “ prove it: However, it is daily experienced  
 “ to suffer the Person beaten, or otherwise  
 “ injur’d, to be a good Witness to prove the  
 “ Defen-



“ Defendant guilty on an Indictment or Information for the Misdemeanor.

“ It is a good Exception against a Witness, that he is an Infidel (that is, that he believes neither the Old nor New Testament, on one of which he must be sworn:) Also want of Discretion is a good Exception; and on this Account alone an Infant may be excepted against; for in some Cases an Infant of nine Years of Age has been admitted to give Evidence; but it is no Exception that a Witness is an Alien or Villain, &c.

It is highly commendable in one that is liable to officiate in the Office of a Juror, to be instructed in Cases of Law, which afford Matter for his Information; and it is observ'd, that those active, spirited Men, who lay up a stock of Knowledge in these things, generally acquit themselves with Honour and Reputation, and receive the Thanks of the Court, not only as Matter of Form, but as a Reward and Encouragement of their Merits. But all Men have not the same Opportunities, nor are all Men's Heads turn'd alike for Studies of this Nature; however, the most ignorant have this Advantage (by which the most knowing daily improve) that if any thing starts up in the course of the Evidence, which does not immediately fall within the Compass of their Knowledge, they have the Privilege to ask the Court; and a Man of Sense and Discretion would sooner chuse to inform his Judgment by this Means, than to commit a Blunder (which some Men's Pride and Vanity have

have drawn them into) especially considering the Pleasure and Satisfaction it is to the Court, where the diligent Attention of a Juror, and earnest Application to the weighty Affairs before him, makes him espy some Scruple, which might have kept himself and his Brethren an Hour in a fruitless Argument, and the Court in Suspense. I say, when a Juror is thus prompted, by a Zeal for Justice, to beg of the Court to be inform'd of any nice Scruple, which may arise in his Breast, he is so far from giving Offence, that I have often seen such an one highly commended for his Assiduity.

It is impossible that any great and weighty Deliberations and Matters of Law should be contain'd in these two Sheets, the Author's Aim being only to give a short View of the great Advantages which are to be gain'd by reading and studying the Author aforementioned, whom I shall once more quote concerning Verdicts.

“ A Jury sworn and charg'd in a capital  
 “ Case, cannot be discharg'd before they have  
 “ given their Verdict; neither can they give  
 “ a privy Verdict in such case; but they may  
 “ give a special Verdict, as well as in any  
 “ other Case.

“ A Jury finding a Man not guilty of an  
 “ Indictment of Murder, are not bound to  
 “ make any further Inquiry, yet may, if they  
 “ will, find him guilty of Manslaughter, or  
 “ of *Homicide se defendendo*, or *per Infortunium*,  
 “ for the Killing is the Substance, and the  
 “ Malice but Circumstance; yet some have  
 “ made this Difference, that where the Jury  
 “ find



“ find a Man guilty of Manslaughter on an  
 “ Indictment of Murder, they may give their  
 “ Verdict generally, without setting forth any  
 “ of the Circumstances: But that they shall  
 “ not be received to find him guilty generally  
 “ of *Homicide se defendendo*, or *per Infortunium*,  
 “ but must set out the whole Circumstances,  
 “ and in the Conclusion shew of what Crime  
 “ they find the Defendant guilty, wherein,  
 “ if they be mistaken, the Court may give  
 “ such Judgment as shall appear to be pro-  
 “ per from the Circumstance set forth.

“ If the Jury on an Indictment of Murder  
 “ find the Defendant guilty of Manslaughter  
 “ without laying any thing expressly, as to  
 “ the Murder, it is void, as being only a  
 “ Verdict for Part. And quere, if Law be  
 “ not the same, where, on such Indictment,  
 “ the Jury find that the Defendant kill'd  
 “ the Party *se defendendo*, or *per Infortu-*  
 “ *nium*.

“ If one be indicted for stealing Goods of  
 “ a certain Value above twelve Pence, the  
 “ Jury may find him guilty; but that the  
 “ Goods are but of the Value of ten Pence:  
 “ But it seems, that if one be indicted of Fe-  
 “ lony generally, and on the Evidence it ap-  
 “ pear that the Fact amounts but to Trespass,  
 “ he cannot be found guilty of the Trespass,  
 “ but ought to be indicted anew; yet, if the  
 “ Circumstances be set forth in an Indict-  
 “ ment for an Offence laid as Felony, and  
 “ the Defendant be found guilty generally,  
 “ and afterwards the Court be of Opinion  
 “ that the Fact amounts only to Trespass, they  
 “ may give Judgment as for Trespass only:

“ And

“ And so they may where a special Verdict  
 “ is found on a general Indictment for Fe-  
 “ lony, and the Fact too amounts but to  
 “ Trespass: Also, if on an Indictment of  
 “ Trespass the Fact appears to have been fe-  
 “ lonious, it hath been adjudg’d that the De-  
 “ fendant may be found guilty of the Indict-  
 “ ment as laid, because the King may pro-  
 “ ceed against the Offender as he thinks fit;  
 “ but it’s said there have been Opinions to  
 “ the contrary: However, if it appear in an  
 “ Action of Trespass, that the taking was  
 “ felonious, it seems that no Verdict ought  
 “ to be taken, unless the Defendant hath  
 “ been before tried for the Felony, because  
 “ the suffering such Actions might be a  
 “ Means to prevent Prosecutions for Fe-  
 “ lonies.

“ If a Verdict on an Indictment for a  
 “ Riot acquit all the Defendants but two,  
 “ and find them guilty; or on an Indictment  
 “ for a Conspiracy acquit all but one, and  
 “ find him guilty, it is repugnant and void  
 “ as to the Persons so found guilty, unless  
 “ the Indictment charge them with having  
 “ made such Riot and Conspiracy *simul cum*  
 “ *aliis Juratoribus ignotis*; but where several  
 “ are jointly charg’d in an Information on a  
 “ Statute, some may be acquitted, and others  
 “ found guilty, because though the Words  
 “ of the Information be joynt, yet in Judg-  
 “ ment of Law each Defendant is severally  
 “ charg’d with his own Offence; also a De-  
 “ fendant in such Information may be found  
 “ guilty for a less Time or Degree than is  
 “ laid, unless the Offence consists in doing

E

“ some



“ some entire Thing, which must be precisely  
 “ prov’d as it is laid.

“ The Court, in judging on a special Verdict,  
 “ is confin’d to what is expressly found,  
 “ and cannot by any Intendment supply the  
 “ Omission of a material Circumstance; and  
 “ therefore when an Indictment charges that  
 “ the Defendant discharg’d a Gun against  
 “ *I. S.* and thereby gave him a mortal Wound,  
 “ and the special Verdict finds that he dis-  
 “ charg’d a Gun, and thereby kill’d *I. S.*  
 “ without expressly saying that he discharg’d  
 “ it against him, the Court cannot take it  
 “ from the other Circumstances that are found  
 “ that he discharg’d it against him. But  
 “ where an Indictment is remov’d into the  
 “ *King’s-Bench*, and the Defendant pleads not  
 “ guilty, & *de hoc ponit se super patriam*, &  
 “ *T. F. Miles Coronator*, & *attornat Dom’ Re-*  
 “ *gis*, &c. *similiter*, and thereupon the Defen-  
 “ dant is found guilty of the Offence in *In-*  
 “ *dictament’ præd’ interius Versus eum queritur*,  
 “ the Verdict is good, for the Words *prout*  
 “ *præd’ T. F. interius Versus eum queritur*, shall  
 “ be rejected, surplus and void.

“ It hath been adjudg’d, that if a Jury ac-  
 “ quit a Prisoner of an Indictment of Felony  
 “ against manifest Evidence, the Court may  
 “ in Discretion, in an extraordinary Case,  
 “ order them to go out, and reconsider the  
 “ Matter; also there are Instances where  
 “ Defendants are acquitted against plain  
 “ Evidence of Felonies, and other enor-  
 “ mous Crimes, have been bound to their  
 “ good Behaviour: However, the Court can-  
 “ not set aside a Verdict which acquits a  
 “ Defen-

“ Defendant of a Prosecution properly criminal, as having been contrary to Evidence, as they may for a Mistrial ; but  
“ they may set aside a Verdict that convicts  
“ a Man for having been contrary to Evidence, &c.

F I N I S

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The READER is desired to add to Page 9.  
*If the Fact is done in the Liberty of WESTMINSTER, apply to the Grand-Jury sitting in Westminster-Hall.*





( 77 )

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